

OGC 70-0336

27 February 1970

MEMORANDUM FOR THE RECORD

SUBJECT: GEHA - Investment of Reserve Funds from UBLIC
Program in Offshore Securities or Other Interest
Bearing Paper

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1. [REDACTED] has orally inquired of this office whether there are any legal prohibitions which would preclude GEHA from investing its reserve funds from the UBLIC program in offshore securities. On 2 February the undersigned by telecon advised [REDACTED] that no legal prohibitions could be found.

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2. GEHA is a nonprofit corporation organized under Chapter 6 of Title 29 of the District of Columbia Code for the purpose of engaging in benevolent, educational and scientific activities and for the mutual improvement of its members. (GEHA is still governed by Chapter 6 since it has not elected to accept the provisions of Chapter 10, the D. C. Nonprofit Corporation Act, enacted 6 August 1962.) By Revenue Ruling dated 16 August 1949 and affirmed on 20 January 1960, GEHA was granted tax-exempt status as a "Voluntary Employees' Beneficiary Association" under section 501(c)(10) of the Internal Revenue Code.

3. The "reserve funds" in question derive from retroactive, premium rate refunds declared by UBLIC pursuant to paragraph 20 of its policy issued to GEHA, the policyholder. This reserve fund has and continues to be used by GEHA to expand and increase insurance benefits without increase in the premium charged the individual member.

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[REDACTED] indicates that currently the reserve amounts to approximately [REDACTED] dollars.

4. The undersigned has reviewed GEHA's corporate charter and by-laws and the relevant District of Columbia Code provisions and found nothing that would prohibit the investment in offshore paper. A review of Internal Revenue Code provisions relevant to GEHA's tax-exempt status discloses no adverse effect upon that status by the proposed investments.

5. It should be noted, however, that a tax-exempt entity such as GEHA is subject to the Foreign Direct Investment Program (Executive Order 11387) and the Interest Equalization Tax (P.L. 88-563; see CCH Stand. Fed. Tax Rep. 69, Vol. 5, para. 4997), both of which seek to improve the U. S. balance of payments by limiting outflows of investment dollars to foreign countries. Therefore, any particular offshore investment program should be closely examined so as to avoid, if desirable, either the restricted activities or the excise tax imposed by the FDIP and Interest Equalization Tax, respectively.

6. Generally, GEHA would not be subject to the FDIP unless it either directly or indirectly owns or acquires a 10% or more interest in certain foreign entities. In addition, there is a general exclusion from FDIP of annual world-wide aggregate positive direct investment not exceeding \$1,000,000.

7. The Interest Equalization Tax, subject to specified exemptions, imposes an excise tax on the acquisition by U. S. persons of foreign securities from a foreign person or entity. The principal exclusions are set out in the above cited CCH Fed. Tax Rep., para. 4997.



Office of General Counsel

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